

**For Immediate Release  
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**Federal Appeals Court Upholds Farmers Rights in Virginia Biosolids Decision  
4<sup>th</sup> Circuit Affirms Preliminary Injunction Overturning County Biosolids Ban**

**RICHMOND** – A Federal Appeals Court panel ruled unanimously today in favor of eleven Virginia farmers by upholding a preliminary injunction that prohibited Appomattox County in Virginia from enforcing its ordinances banning biosolids.

Biosolids are treated sewage sludge that is authorized by the U.S. Environmental Protection Agency (EPA) and state authorities for use as a fertilizer on farm fields.

In a six-page opinion issued today, the U.S. Court of Appeals in Richmond wrote: “In light of the widespread use of biosolids in Virginia and elsewhere in the United States, the regulations and examinations undertaken by the Virginia General Assembly and the United States Environmental Protection Agency, and the studies by the scientific community, the fear of possible, adverse health effects is too attenuated at this time to outweigh the likelihood of harm to the Farmers.”

Commenting on the decision by the Federal Appeals Court, James B. Slaughter, counsel for the Appomattox farmers said: “Today’s ruling is significant in that it marks the first time a U.S. Federal Appeals Court has issued an opinion on a biosolids land application dispute. The judges have upheld the rights of the plaintiffs and their freedom to farm in compliance with state and federal laws.”

The U.S. District Court had previously rejected arguments by Appomattox County attorneys saying, “The Virginia General Assembly and the U.S. EPA have addressed the question of biosolids safety, permitting the ground application of sewage sludge after determining that biosolids can be safely used on farmland.”

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In addition to reaffirming the farmers' claims that federal and Virginia state law preempt local officials from adopting biosolids ordinances that go beyond the county's authority, the ruling also allows the farmers' claims for monetary damages to go forward.

Today's U.S. Court of Appeals opinion concluded: "Finally, the District Court determined that because the VDH and the U.S. EPA currently regulate the land application of biosolids and will continue to do so during the pendency of this litigation, the public interest favors the granting of the injunction until a determination on the merits can be completed. We conclude that the District Court did not abuse its discretion in reaching this conclusion." A date for the trial on "O'Brien et al v. Appomattox County, Virginia et al" has not been set.

The Appomattox farmers hold valid Virginia State permits for the land application of biosolids which are issued by the Virginia Department of Health (VDH). Hundreds of Virginia farmers use biosolids because they recognize the benefits and reap the economic rewards of land application of this organic fertilizer.

The Appomattox farmers filed their initial Complaint against the County on June 28, 2002 and claimed \$820,000 in damages, saying: "The Appomattox County Board of Supervisors adopted two Ordinances earlier this year that effectively ban the land application of biosolids in Appomattox County. The Ordinances are an intended and effective ban by the County. This ban is in direct conflict with comprehensive federal and state laws regulating biosolids, has no rational basis, deprives farmers of their property rights, discriminates against a valuable fertilizer, and impermissibly bans an article in interstate commerce."

According to the Virginia Department of Health, farmers in over 40 counties in the state fertilized their fields and conditioned their soils with biosolids during 2002. Appomattox farmers were able to receive biosolids applications for the first time on their fields following the approval of the preliminary injunction last August.

Biosolids result from the treatment of sewage sludge that renders it fit as a useful, safe and environmentally beneficial product. The practice is approved, regulated and monitored by the U.S. Environmental Protection Agency (EPA), the U.S. Department of Agriculture (USDA), the Virginia Department of Health (VDH) and the Virginia Department of Agriculture and Consumer Services.

**Editor's Note: Attached is a copy of the 6-page opinion issued today by the U.S. Court of Appeals for the Fourth Circuit in Richmond, Va.**

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